UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

SKARLA GARCIA,)
)
Plaintiff,)
) Case No. 16-cv-9782
v.)
)
MIDLAND FUNDING, LLC and)
MIDLAND CREDIT MANAGEMENT, INC.)
)
Defendant.) Jury Demanded

COMPLAINT

Plaintiff, Skarla Garcia, brings this action under the Fair Debt Collection Practices Act, 15 U.S.C. § 1692, et seq. ("FDCPA"), for a finding that the Defendants' debt collection actions violated the FDCPA, and to recover damages for the Defendants' violations of the FDCPA, and alleges:

JURISDICTION AND VENUE

1. This Court has jurisdiction pursuant to § 1692k(d) of the FDCPA, and 28 U.S.C. § 1331 and 1337.

2. Venue is proper in this District because parts of the acts and transactions occurred here and the Defendants transact substantial business here.

PARTIES

3. Plaintiff, Skarla Garcia ("Plaintiff"), is a resident of the State of Illinois, from whom the Defendants attempted to collect an alleged debt originally owed to Best Buy. Plaintiff is thus a consumer as that term is defined in 15 U.S.C. §1692a(3) of the FDCPA.

4. Defendant Midland Funding LLC ("Midland") is a Delaware limited liability company with its principal place of business at 3111 Camino Del Rio N, Suite 103, San Diego,

CA 92108. It does or transacts business in Illinois. Its registered agent and office are Illinois Corporation Service Co., 801 Adlai Stevenson Drive, Springfield, IL 62703. (Exhibit A, Record from Illinois Secretary of State).

5. Defendant Midland is engaged in the business of a collection agency, using the mails and telephone to collect consumer debts originally owed to others.

6. Defendant Midland holds a collection agency license from the state of Illinois. (Exhibit B, Record from Illinois Department of Financial & Professional Regulation).

7. Defendant Midland is a debt scavenger that specializes in buying large portfolios of defaulted consumer debts for pennies on the dollar, the full amount of which it then tries to collect through other debt collectors.

8. Defendant Midland regularly collects or attempts to collect defaulted consumer debts, and is a “debt collector” as defined in 15 U.S.C. § 1692a(6) of the FDCPA.

9. Defendant Midland Credit Management (“MCM”) is a Kansas corporation with its principal place of business at 3111 Camino Del Rio N, Suite 1300, San Diego, CA 92108-8875. MCM does or transacts business in Illinois. Its registered agent and office is Illinois Corporation Service Co., 801 Adlai Stevenson Drive, Springfield, IL 62703. (Exhibit C, Record from Illinois Secretary of State).

10. Defendant MCM is a collection agency, as that term is defined in the Illinois Collection Agency Act, 225 ILCS 425/1 et seq., and attempts to collect debts held in the name of Midland Funding, LLC.

11. Defendant MCM holds a collection agency license from the State of Illinois. (Exhibit D, Record From Illinois Department of Financial & Professional Regulation).

12. Defendant MCM regularly collects or attempts to collect defaulted consumer debts, and is a "debt collector" as defined in 15 U.S.C. § 1692a(6) of the FDCPA.

FACTUAL ALLEGATIONS

13. Plaintiff allegedly incurred a debt to Best Buy for items that she used for personal, family or household purposes ("alleged debt"). The alleged debt is thus a "debt" as that term is defined by §1692a(5) of the FDCPA.

14. Due to her financial circumstances, Plaintiff could not pay the alleged debt, and it went into default.

15. Midland Funding, LLC purportedly purchased the alleged debt sometime thereafter.

16. MCM began attempting to collect the defaulted debt on behalf of Midland.

17. Due to MCM's collection efforts, Plaintiff entered into a payment plan with MCM and Midland and began making regular monthly payments on the alleged debt.

18. Plaintiff would speak with one of MCM's collectors directly and did not authorize MCM to communicate with other individuals regarding her alleged debt or her payment of the debt.

19. MCM had Plaintiff's contact information because it had her cell phone number and a landline number, along with Plaintiff's address. MCM was able to communicate with Plaintiff without gathering additional information from third parties, and regularly communicated with Plaintiff.

20. In May, 2016, Plaintiff experienced additional financial hardships and missed a previously scheduled payment to MCM.

21. Shortly thereafter, MCM contacted Plaintiff's mother on a shared landline phone and divulged extensive and significant information about Plaintiff's alleged debt and payment plan.

22. Plaintiff did not authorize MCM to contact her mother regarding the alleged debt or to discuss the debt with third parties, including her mother.

23. 15 U.S.C. § 1692c provides:

> **(b) Communication with third parties**
>
> **Except as provided in section 1692b of this title, without the prior consent of the consumer given directly to the debt collector, or the express permission of a court of competent jurisdiction, or as reasonably necessary to effectuate a post judgment judicial remedy, a debt collector may not communicate, in connection with the collection of any debt, with any person other than a consumer, his attorney, a consumer reporting agency if otherwise permitted by law, the creditor, the attorney of the creditor, or the attorney of the debt collector.**
>
> **15 U.S.C. 1692c(b)**

24. By communicating with a third party for a purpose other than to acquire location information about Plaintiff, and without Plaintiff's consent, the Defendants violated 15 U.S.C. § 1692c(b) of the FDCPA.

25. The communication with Plaintiff's mother was made for the purpose of attempting to collect an alleged debt from Plaintiff.

26. 15 U.S.C. § 1692f of the FDCPA provides as follows:

> **Unfair practices**
>
> **A debt collector may not use unfair or unconscionable means to collect or attempt to collect any debt. Without limiting the general application of the foregoing, the following conduct is a violation of this section:**

27. MCM's communications with Plaintiff's mother, including divulging information regarding Plaintiff's debt to her, was an unfair and unconscionable means used to attempt to collect a debt in violation of §1692f.

28. Plaintiff suffered actual damages in the form of emotional distress, including but not limited to embarrassment, annoyance and aggravation as a result of the Defendants' violation of §§ 1692c(b) and 1692f.

29. Midland is liable for the acts and omissions of MCM, committed in connection with efforts to collect the alleged debt from Plaintiff. (*See Fox v. Citicorp Credit Services, Inc.*, 15 F.3d 1507 (9th Cir. 1994); *Pollice v. National Tax Funding*, L.P., 225 F.3d 379 (3rd Cir. 2000)).

COUNT I-FAIR DEBT COLLECTION PRACTICES ACT

30. Plaintiff re-alleges above paragraphs as if set forth fully in this count.

31. Midland and MCM violated 15 U.S.C. § 1692c(b) by contacting and divulging information regarding Plaintiff's debt to her mother when MCM had no legal right to do so.

32. Midland and MCM violated 15 U.S.C. §1692f by using unfair and unconscionable means used to attempt to collect a debt.

33. As a result of the Defendants' violations of the FDCPA, Plaintiff is entitled to an award of actual damages, statutory damages, costs and reasonable attorney fees.

WHEREFORE, Plaintiff respectfully requests that this Court enter judgment in her favor and against Defendants Midland Funding, LLC and Midland Credit Management, Inc. as follows:

A. Actual damages pursuant to 15 U.S.C. § 1692k(a)(1);

B. Statutory damages pursuant to 15 U.S.C. § 1692k(a)(2);

C. Costs and reasonable attorney fees pursuant to 15 U.S.C. § 1692k(a)(3); and

D. Such other or further relief as the Court deems proper.

JURY DEMAND

Plaintiff demands trial by jury.

Respectfully Submitted,

By: s/ *Bryan Paul Thompson*
One of Plaintiff's Attorneys

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DOCUMENT PRESERVATION DEMAND

Plaintiff hereby demands that defendant take affirmative steps to preserve all recordings, data, documents, and all other tangible things that relate to plaintiff, the events described herein, any third party associated with any telephone call, campaign, account, sale or file associated with plaintiff, and any account or number or symbol relating to them. These materials are likely very relevant to the litigation of this claim. If defendant is aware of any third party that has possession, custody, or control of any such materials, plaintiff demands that defendant request that such third party also take steps to preserve the materials. This demand shall not narrow the scope of any independent document preservation duties of the defendant.

By: s/ *Bryan Paul Thompson*
One of Plaintiff's Attorneys

NOTICE OF LIEN AND ASSIGNMENT

Please be advised that we claim a lien upon any recovery herein for 1/3 or such amount as a court awards. All rights relating to attorney's fees have been assigned to counsel.

By: s/ *Bryan Paul Thompson*
One of Plaintiff's Attorneys